got at only when it manifests itself, so to speak, by turning machinery, and thereby becoming the main element in determining the value of a mill. The second argument is one of expediency; that to hold otherwise would throw into confusion the whole system of taxation. The simple answer to both these arguments is that they may be shown by a common sense view of the facts to rest on no sound basis. If the owner of a piece of rocky land beside a stream erects a dam whereby he creates a head of water, it seems plain that the value of his land is enhanced by it. He could sell it for more in the market; it is worth more to him if he wishes to use it for himself. Whether this be called the creation of a potentiality or not, the simple fact is that his land is worth more because it has a good water power. This being so, there is no reason why the land thus increased in value should not be taxed correspondingly. If a lot were increased in value by the discovery of petroleum wells, it would surely be no objection to the imposition of an increased tax to say that the petroleum was carried fifty miles away in pipes before being consumed. Nor would it be any more conclusive to argue that because the value of the plant using this cheaper fuel was thereby increased, that of the land whence the fuel came could not also be increased. It is just here that we find an answer to the second argument also. There is no reason why the building of the dam, at the same time that it increases the value of the land on which it is situated, should not likewise, by furnishing cheaper or more abundant motive power to a down-stream factory, raise the taxable value of the latter. This point seems to have escaped the attention of the court. It seems, however, to offer a satisfactory solution of the difficulty, and is one of the grounds on which a decision opposed to that of the Maine court was reached by the New Hampshire court in *Mfg. Co.* v. *Gifford*, 64 N. H. 337.

What constitutes Champerty. — The Supreme Court of the United States has recently given a decision in *Peck* v. *Henrich*, 173 Sup. Ct. Rep. 927, upon the interesting point, not often raised, as to what constitutes champerty. In this case, the title to a piece of land was conveyed to the plaintiff as trustee; all costs of obtaining possession of it were to be borne by him; and in the event of its being obtained the trustee was to receive 33⅓ per cent of the proceeds "after paying all expenses, costs, and expenditures" out of his share. The decision of the court that this agreement is champertous seems plainly right. According to Blackstone, 4 Commentaries, 124, and also the later cases, such as *Ry. Co.* v. *Brady*, 57 N. W. Rep. 767 (Neb.); *Land Co.* v. *City of Superior*, 67 N. W. Rep. 38 (Wis.), there are three elements necessary to constitute the offence. First, and this is common to all forms of maintenance, the absence of any other interest in the case on the part of the champertor than that arising from his champertous contract; second, the assumption by the champertor of all expenses in conducting the case; third, a previous agreement for his remuneration from the proceeds of the suit. The present case combines these three elements.

The general ground upon which the legal condemnation of champerty rested, and still rests, is that of public policy. It may be questioned, however, if the common law offence of champerty, as we know it to-day, whether regarded from an historical or from a practical point of view, deserves to be considered as a living part of the law. Historically, the

nature of the offence, the evil against which the law is directed, have in large part changed. If the language of the statute of 1 Ed. III. c. 14, and of Hawkins, 1 C. P. 462, sec. 38, is to be regarded, it seems that originally the taint of champerty was not due to any feeling that there was evil in the increase of lawsuits *per se*. It was owing to the fear that the purchasing and conducting of suits "by a great man of the realm" would have a "manifest tendency to oppression." To-day oppression, or illegal influencing of the courts, is out of the question, and the condemnation of champerty arises, as the tone of the case under discussion shows, from the feeling that it is undesirable for the courts to be annoyed by the multiplication of suits brought by persons with no interest of their own.

Admitting, however, that champerty, in its changed modern significance, is still objectionable, of what practical efficacy is the law of champerty as it stands to-day? Owing to the need of combining the three elements above mentioned, the question of whether or not an agreement is to be held champertous seems one of terminology. On the authority of this present case, a contract providing that an attorney is absolutely to receive 33⅓ per cent of the gain resulting from the suit is champertous, provided the other two elements be present. An agreement which reads that the attorney shall receive a fee contingent on and proportioned to the amount recovered is free from this taint. *Ramsey* v. *Trent*, 10 B. Mon. (Ky.) 341; *Major* v. *Gibson*, 1 Patt. & H. 48. Such being the case, it would seem that, to an attorney bent upon carrying out an affair of this nature, the law in regard to champerty would prove no great obstacle.

ACCORD AND SATISFACTION. — In the recent case of *Clayton* v. *Clark*, 21 So. Rep. (Miss.) 565, the Supreme Court of Mississippi has rejected the authority of the much quoted dictum in *Pinnel's Case*, 5 Rep. 117*a*, to the effect that a lesser sum cannot be satisfaction for a larger debt already due. The exact nature of the case under consideration is not made quite clear; but it seems that the defendant paid a smaller sum for a larger debt then payable, and that the plaintiff accepted it in full satisfaction of the debt. This is the construction put upon it by the court; and thus the question popularly supposed to be involved in *Pinnel's Case*, is directly raised.

The last important case which purported to pass authoritatively on the present question was *Foakes* v. *Beer*, L. R. 9 App. Cas. 605; but between that case and this there is an important distinction. There a smaller sum of money was paid in consideration of a promise by the creditor not to sue on the debt, and that was held not to create a binding contract. The cases cited in support of the decision were of the class in accord with the dictum in *Pinnel's Case*. That dictum, it is suggested, involved a different question from that in *Foakes* v. *Beer*, where the smaller sum was not paid in satisfaction of the debt. It was a new act to which the doer was not previously bound, done in exchange for a new promise; this was as true as if, while the debt existed, the smaller sum had been paid for a promise to convey a house, for instance. The transaction was distinct, and had no effect upon the debt itself. There would seem to be no reason why it should not have been held a valid contract, as in the parallel case of *Reynolds* v. *Pinhowe*, 1 Cro. Eliz. 429; and it is possible that it was held invalid only by reason of a false analogy.